

documents or papers being examined or audited. Adequate office space and other facilities reasonably required by any representatives of the Secretary engaged in an examination, audit or inspection shall be furnished without charge by the Person in control of the premises where the examination or audit is being conducted.

§ 298.38 Partnership agreements.

Partnership agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basis areas:

- (a) Duration of the partnership,
- (b) adequate partnership funding requirements and mechanisms,
- (c) dissolution of the partnership and the withdrawal of a general partner and
- (d) the termination, amendment, or other modification of the partnership agreement without the prior written consent of the Secretary.

§ 298.39 Exemptions.

The Secretary may exempt an applicant from any requirement of this Part not required by law, in exceptional cases, on written findings that:

- (a) The case materially involves factors not considered in the promulgation of this part;
- (b)(1) a national emergency makes it necessary to approve the exemption or
- (2) the financial liability of the United States will be substantially relieved;
- (c) the exemption will not substantially affect effective regulation of the Title XI program, consistent with the objectives of this part; and
- (d) exemption will not be unjustly discriminatory. In the case of Eligible Export Vessels, the Secretary may also exempt an applicant from any requirement of this part not required by law if the Secretary makes a written determination that such exemption would assist in creating financing terms that would be compatible with export credit terms for the sale of vessels built in shipyards other than those in the United States.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Payment Default.* In the case of any default in the payment of principal or interest with respect to the Obligations (provided that the Secretary shall not have, upon such terms as may be provided in the Obligation or related agreements, prior to that demand, assumed the obligor's rights and duties under the Obligation and agreements and shall have made any payments in default), the following procedures shall be applicable:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days thereafter.

(3) After demand for payment is made by or on behalf of the Obligees, the Secretary shall make payment under the Guarantees, except if the Secretary determines that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default (Security Default), the Secretary, as provided in section 1105(b) of the Act, shall have the sole discretion to declare such default a Security Default and may notify the Obligor or agent of the Obligor of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If demand for payment of the Guarantees is made, the Secretary shall, no later than 30 days after the date of such demand

(provided that the Secretary shall not have, upon such terms as may be provided in the Obligations or related agreements, prior to that demand, assumed the Obligor's rights and duties under the Obligation and agreements and shall have made any payments in default), make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In general.* Provisions governing remedies after a default, which relate to rights and duties of the Obligor, the Secretary and other Persons (where appropriate), shall be included in the Security Agreement or in other parts of the Documentation.

(b) *Action by Secretary.* After a default has occurred and is continuing and before making payment required under the Guarantees, the Secretary may take the Vessel or Advanced or Modern Shipbuilding Technology and hold, lease, charter, operate or use the Vessel or Advanced or Modern Shipbuilding Technology, accounting only for the net profits to the Obligor. After making payment required under the Guarantees, the Secretary may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to protect rights and interests granted to the Secretary by sections 1105(c), 1105(e) and 1108(b) of the Act, the Security Agreement or other applicable provisions of law and of the Documentation.

(c) *Security proceeds to Secretary.* The Secretary's interest in proceeds realized from the disposition of or collection with respect to security granted to the Secretary in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by the Secretary at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in the Secretary), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) Guarantee Fees, if any, due the Secretary under the Security Agreements;

(2) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(3) All advances, including interest thereon, by the Secretary, pursuant to the Security Agreement and all reasonable charges and expenses of the Secretary;

(4) The accrued and unpaid interest on the Secretary's Note;

(5) The accrued and unpaid balance of the principal of the Secretary's Note; and

(6) To the extent of any collateralization by the Obligor of other debt due to the Secretary from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c) (1) through (6) of this section.

§ 298.42 Reporting requirements—financial statements.

The financial statements of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the regulatory authority or other political subdivision of the United States on or before December 31, 1970. In the case of Eligible Export Vessels, the accounts of the Company shall be audited at least annually, and the Secretary may require that the financial statements be in accordance with generally accepted accounting principles, by accountants as described in the first sentence of this section or by independent public accountants licensed to practice by the regulatory authority or other political subdivision of a foreign country, provided such accountants are satisfactory to the Secretary. The accountants performing such audits may be the regular auditors of the Company.